U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-Z-I-T- INC

DATE: MAR. 7, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, an automobile parts trader, seeks to temporarily employ the Beneficiary as general manager of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the Vermont Service Center denied the petition, concluding that the record did not establish, as required: (1) that the Beneficiary has been employed abroad in a managerial or executive capacity; and (2) the foreign entity's financial ability to remunerate the beneficiary and to commence doing business in the United States.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director erred by not giving enough weight to the statements submitted in support of the petition.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

[1] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position.

The petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

II. EMPLOYMENT ABROAD

The Director found that the Petitioner had not established that the Beneficiary had the required continuous year of employment abroad as a manager or executive. On appeal, the Petitioner asserts that it has presented credible evidence of the required employment. We agree with the Director that the information provided by the Petitioner is not credible.

The Petitioner filed the petition in January 2018. At that time, the Beneficiary was in the United States as a B-2 nonimmigrant visitor, having arrived in August 2017. Therefore, the qualifying employment must have occurred between January 2015 and August 2017.

The Petitioner indicated that it is a subsidiary of [redacted] A December 2017 letter and September 2017 certificate from [redacted] attested to the Beneficiary's employment abroad, although the two documents provided different details. The letter stated that the Beneficiary became deputy general manager of [redacted] in 2012, remaining in that position "for the past five years." The certificate, however, provided a different timeline for the Beneficiary's employment:

> 2012: Hired by [redacted] in an unspecified capacity
> 2013-2015: Deputy General Manager of [redacted]
> 2015-2017: General Manager of [redacted] (an affiliate of [redacted]

The Director notified the Petitioner of information that contradicts the above claims. When the Beneficiary applied for her B-2 nonimmigrant visa in 2015, she stated that she was a science teacher at a school in [redacted] China. She claimed no previous employment. As a result, the Director questioned the more recent claim that the Beneficiary had worked for [redacted] and [redacted] since 2012.

In response, the Petitioner submitted a résumé indicating that the Beneficiary was a teacher from 1999 to 2013, and has since remained an "[i]nactive . . . member of faculty." The résumé also indicated that the Beneficiary worked part-time for [redacted] from July 2012 to August 2013, "while still working as a teacher." The Petitioner's earlier narratives of the Beneficiary's past experience did not include this information.

The Director denied the petition, stating that the Petitioner had not submitted independent documentary evidence, such as payroll records, to overcome the inconsistencies and support the explanation set forth in the résumé.

On appeal, the Petitioner states: "The Director unreasonably dismissed the employment certificate and support letter as 'insufficient.'" The Petitioner acknowledges that "compensation records are proof of employment," but asserts that "other evidence [can] be considered as a whole that . . . also proves the Beneficiary's past employment in Appellant's group companies."

In the absence of contradictory evidence or information, a letter from the foreign entity can often suffice to meet the Petitioner's burden of proof. *Cf.* 8 C.F.R. § 204.5(g)(1), which states, in the context of employment-based immigrant petitions, "Evidence relating to qualifying experience . . . shall be in the form of letter(s) from current or former employer(s)." The claims in such a letter, however, are subject to verification, and in this instance, the Beneficiary herself provided conflicting information to the U.S. government during the period of the claimed employment.

The Petitioner must resolve this discrepancy in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the Petitioner has not submitted independent documentary evidence, or offered any explanation as to why a high-ranking official of an auto parts company, who had not taught for years, would write "I am a science teacher" on a visa application when asked to name her primary occupation. We agree that payroll records are not the only possible evidence of employment, but nevertheless it is significant that the Petitioner did not submit those records or explain their absence. The Petitioner likewise submitted no evidence from the school in [redacted] to verify the Beneficiary's claimed inactive status on the faculty.

In the end, it remains that, in 2015, the Beneficiary described herself as a school teacher. She revised her employment history when she sought immigration benefits based on the newly-claimed employment. Truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989), quoted in *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Self-serving statements written after the fact do not carry the same weight as objectively verifiable, contemporaneous documentation.

In this case, the Petitioner's essentially uncorroborated claims about the Beneficiary's employment conflict with the Beneficiary's own statements at the time of that claimed employment, and therefore we cannot find that the Petitioner has met its burden of proof with regard to the Beneficiary's claimed employment abroad.

Based on the deficiencies and inconsistencies discussed above, the Petitioner has not established that the Beneficiary was employed in a managerial or executive capacity abroad.

III. NEW OFFICE

The Director also found that the Petitioner had not established the foreign entity's financial ability to remunerate the beneficiary and to commence doing business in the United States. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(*2*). However, because the lack of corroboration of the Beneficiary's claimed foreign employment is dispositive in this case, we need not reach the issue of financial ability and therefore reserve it.

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of B-Z-I-T- Inc*, ID# 2355127 (AAO Mar. 7, 2019)